

53rd MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION
Friday, February 20, 2004
Minutes

Chairman Wilson called the meeting to order at 1:07 p.m.

Commissioners present: Chase, Crofoot, Ginsburg, Lucht, Malouf, Nicolay, Risher, Salamon, and Toulson

ITEM 1.

Approval of Minutes

Commissioner Ernest Crofoot made a motion to approve the Minutes of the January meeting of the Commission, which was seconded by Commissioner Debra Risher, and unanimously approved.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Chairman Wilson asked if the Deputy Directors had information to add to the written *Update*. As there was none, he announced the next agenda item. Copies of the *Update* were available on the documents table and on the Commission's website at: <http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

ITEM 3.

CERTIFICATION OF ELECTRONIC HEALTH NETWORK: McKesson Corporation

Chairman Wilson indicated that Irene Battalen, Health Policy Analyst in the Division of EDI Programs and Payer Information Systems, would present information on this item. Ms. Battalen briefly described the corporation's location and business practices. She said that McKesson Corporation requested recertification as an electronic health network and that staff recommended recertification. Vice Chairman George Malouf made a motion that the Commission approve the staff recommendation, which was seconded by Commissioner Crofoot, and unanimously approved.

CERTIFICATION OF ELECTRONIC HEALTH NETWORK: McKesson Corporation is hereby APPROVED.

ITEM 4.

PROPOSED ACTION: COMAR 10.25.09— Requirements for Payers to Designate Electronic Health Networks (s)

Chairman Wilson said that the next item also concerned EHNs. Maryland law requires payers operating in this state to accept electronic health transactions from EHNs that are accredited by the Electronic Healthcare Network Accreditation Commission. Ben Steffen presented a suggested modification to the current regulations to bring them into compliance with HIPAA requirements. Commissioner Crofoot made a motion to approve the proposed changes to the regulations, which was seconded by Vice Chairman Malouf, and unanimously approved.

PROPOSED ACTION: COMAR 10.25.09— Requirements for Payers to Designate Electronic Health Networks (s) is hereby APPROVED.

ITEM 5.

FINAL ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan

Chairman Wilson announced that in October, the Commission approved changes to the Comprehensive Standard Health Benefit Plan (CSHBP) to be effective July 1, 2004. Enrique Martinez-Vidal informed the Commissioners that changes made to the regulations include an increase in copayments on prescription drugs, an increase in the Emergency Room copayment, and the option of a high deductible plan. He said that there were no public comments received and that the staff recommended final approval. Commissioner Robert Nicolay made a motion that the Commission approve the regulations, which was seconded by Commissioner Stephen J. Salamon, and unanimously approved. Commissioner Crofoot asked how long these changes would keep the costs below the cap. Mr. Martinez-Vidal said that this action brought the cost of the plan down to right below the cap for the projected 2004 costs.

ITEM 6.

EMERGENCY AND PROPOSED ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan — Changes to the Prescription Drug Deductibles — Effective July 1, 2004

Chairman Wilson asked the Commissioners to recall that last fall when they were discussing high deductible products for the small group market, they expressed their intention that these plans could be joined with special pretax savings accounts. After the actions finalized in Item 5, Congress passed the Medicare reform bill. The Commission must consider emergency regulations to bring the regulations just revised into conformance with provisions passed by Congress for health savings accounts (HSAs). This change is through a proposed emergency regulation so that carriers can adjust their rate filings to be in line with the new regulations by July 1, 2004. Mr. Martinez-Vidal said that due to certain requirements pertaining to HSAs included in the recently enacted federal Medicare Modernization Act (MMA), changes to the CSHBP prescription drug deductibles were needed so the Plan will meet the definition of a high-deductible policy under that Act. The proposed emergency regulations will maintain the current prescription drug deductible for the HMO delivery system at \$250.00 (because the HMO has no medical deductible, it can never qualify as a high-deductible policy) and will increase the deductible for the POS, PPO, and Indemnity delivery systems to \$1,000 per individual policy and \$2,000 for a policy other than an individual policy. For those individuals not wanting a high-deductible plan coupled with an HSA, these deductibles may continue to be lowered through the purchase of riders. This change would decrease the cost of the CSHBP by approximately four percentage points. Vice Chairman Malouf made a motion to approve the proposed

changes as Emergency and Proposed Regulations, which was seconded by Commissioner Salamon, and unanimously approved.

EMERGENCY AND PROPOSED ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan — Changes to the Prescription Drug Deductibles — Effective July 1, 2004 is hereby APPROVED.

Due to Commissioner Crofoot's follow-up question regarding the CSHBP rate cap, there was a question call on the vote on Item 5. Commissioner Crofoot made a motion to approve the regulatory changes, which was seconded by Commissioner Debra Risher, and unanimously approved.

FINAL ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan is hereby APPROVED.

ITEM 7.

FINAL ACTION: COMAR 10.24.17— State Health Plan for Facilities and Services: Cardiac Surgery and Percutaneous Coronary Intervention Services

At the October 30, 2003 meeting, the Commission promulgated an updated Chapter of the State Health Plan for Cardiac Surgery and Percutaneous Coronary Intervention. Chairman Wilson said that the updated plan identified key issues and policies, standards for CON review and the forecast of future cardiac surgery use. A public hearing was held January 8, 2004. The Commission must consider final approval of the updated chapter. Pamela Barclay, Deputy Director of Health Resources, said that having reviewed the formal public comments received, staff recommended no changes. Ms. Barclay presented a development timeline for the adoption of the regulatory changes and a summary of the comments received at the public hearing, during the written formal public comment period, and staff's analysis, including the following points:

- Adoption of the plan **improves** access to quality services
 - Only one new program can be considered under this plan;
 - Continues the policy that a new program must achieve and maintain a minimum caseload or close
- The proposed plan is **consistent** with ACC/AHA guidelines regarding elective and primary angioplasty services.
 - The plan requires that elective angioplasty be performed only in hospitals with on-site cardiac surgery.
 - The plan limits primary angioplasty in hospitals without on-site cardiac surgery to those institutions capable of meeting resource, volume, and on-going quality assessment requirements.
- Adoption of the proposed plan **strengthens** the review of any future research project that requires a waiver from the Commission by:
 - Requiring Institutional Review Board review before submission of a proposal to the Commission;
 - Adding an additional review by an independent Research Proposal Review Committee; and
 - Requiring Commission action on each waiver request.

- Adoption of the proposed plan **builds** on Maryland's strong, on-going planning process for specialized health care services and applies new evidence on clinical advances in cardiovascular care.
 - The plan applies evidence gained in the C-PORT project to improve the delivery of care to patients with AMI.
 - The plan includes policies designed to monitor and assess the impact of dynamic changes in cardiovascular care.

Following discussion, Commissioner Crofoot made a motion to approve the regulations, which was seconded by Vice Chairman Malouf, and unanimously approved.

FINAL ACTION: COMAR 10.24.17— State Health Plan for Facilities and Services: Cardiac Surgery and Percutaneous Coronary Intervention Services is hereby APPROVED.

ITEM 8.

ACTION: CERTIFICATE OF NEED: Johns Hopkins Home Care Group — Closure of Hospice Program, Docket No. 03-24-2118

Chairman Wilson stated that the next agenda item was an action for closure of the hospice program for Johns Hopkins Home Care Group. Susan Panek, Chief, Certificate of Need, reviewed the actions leading up to this request. Johns Hopkins officials met with the Commission staff in September of 2002 to explain in detail the reasons for its decision to end its own hospice program and enter into an agreement with The Washington Home for an initial period of five years in which that entity would assume responsibility for the direct delivery of hospice patient care. Because The Johns Hopkins Home Care Group had surrendered its license and ceased operating its hospice care program, staff and counsel concluded that the effect of the affiliation agreement was to eliminate a CON-approved medical service and, therefore, required CON action by the Commission. Having considered the clinical and administrative elements of the closure, and the context of more than a year and a half of Johns Hopkins' experience with the arrangement, staff recommended that the Commission grant the required Certificate of Need. Following discussion among the Commissioners, staff, and Patty Brown, counsel for Johns Hopkins Health System, regarding procedures and potential penalties for entities taking reviewable actions prior to obtaining CON approval, Commissioner Crofoot made a motion to approve the CON, which was seconded by Commissioner Walter Chase, and unanimously approved.

ACTION: CERTIFICATE OF NEED: Johns Hopkins Home Care Group — Closure of Hospice Program, Docket No. 03-24-2118 is hereby APPROVED.

ITEM 9.

LEGISLATIVE REPORT

The next agenda item was the Legislative Report. Chairman Wilson said that HB 845 Health Insurance - Small Group Market - Premium Rates was discussed via teleconference call on February 17th. He asked whether the Commissioners would like to have additional discussion of that bill. Commissioner Salamon said that he believed that it was protocol for the Commission to have teleconferences during the legislative session to determine the Commission's position on bills. Chairman Wilson interjected that those are actually open meetings and that anyone that would like to have access to the teleconference meetings is welcome. Barbara McLean, Executive Director, added that notice of all teleconferences is provided on the Commission's website. Those interested in having access would need to come to the Commission's offices to listen to the telephone call.

Commissioner Salamon said during the teleconference the Commissioners had a recommendation from staff to oppose HB 845 and that he made plea to reverse that position and support the bill. There was ensuing detailed discussion among the Commissioners present at the teleconference and a suggestion was made by Vice Chairman Malouf that the Commission's recommendation be one of no position with a series of questions and concerns about HB 845. There ensued further discussion whereby it was noted by the Executive Director that if the Commission staff were going to be able to testify at the bill hearing, then the Commission must adopt a position. Vice Chairman Malouf's recommendation was then revised, for the purpose of having that testimony at the bill hearing, to a position of opposed with questions that could then be addressed to the bill sponsor. In the event that the concerns and questions of the Commission were satisfactorily answered, the Commission would consider a change in its position in the future. Commissioner Salamon stated that was his understanding from the conversation, for the record.

Chairman Wilson reminded the Commissioners that HB 845 proposes to alter the way that a carrier can adjust the community rating for the CSHBP and repeals the current community rating band for plus or minus 40%, to go up to plus or minus 60%, plus an additional 25% whether or not the person being rated is a tobacco user. The general consensus was that this was a very wide rate band that would compromise the concept of adjusted community rating. Years ago, when the rating band was widened from 33% to 40%, it did not expand the number of employer groups or lives that were covered. He noted that Commissioner Salamon's accounting reflected the way the decision was made during the teleconference. Ms. McLean did check again on whether the Commission would have to take a position on a bill in order to testify and was told that it would. Further, Chairman Wilson said that he would entertain the possibility of discussing this matter again. Vice Chairman Malouf said that he reaffirmed the position taken by the Commission. Commissioner Salamon said that for the sake of continuity, he would not make a motion to change the Commission's position; however, he wanted his support for the bill and the description of the discussions set forth above reflected in the public record.

Mr. Martinez-Vidal and Kristin Helfer Koester, Chief of Legislative and Special Projects, then reviewed the status of legislation affecting the Commission. Staff has reviewed about 130 bills thus far. Thirty-four of those bills affect the Commission. HB 116, HB 154, and HB 114 have been withdrawn. Budget hearings for MHCC were held in both the House of Delegates and the Senate. There was a recommended \$50,000 reduction in reclass funding for the next year for the Commission and the Health Services Cost Review Commission combined; however, the respective proportions are unclear.

ITEM 10.

Hearing and Meeting Schedule

Chairman Wilson said that the next scheduled meeting of the Maryland Health Care Commission would be on Friday, March 19, 2004 at 4160 Patterson Avenue, Room 100, in Baltimore, Maryland at 1:00 p.m.

ITEM 12.

Adjournment

There being no further business, the meeting was adjourned at 2:14 p.m. upon motion of Vice Chairman Malouf, which was seconded by Commissioner Toulson and unanimously approved by the Commissioners.